

### REMARKS/ARGUMENTS

This is in response to the Office Action of October 11, 2006. In that Office Action, Claims 1, 4-9, 11, 12, 14-26, and 29 were rejected under 35 USC 102(b) as being anticipated by Dillon et al.

Claims 1, 4-11, 14-20, 22-27, and 29 were rejected under 35 USC 102(b) as being anticipated by Mathias et al.

Claims 13 and 28 were rejected under 35 USC 103(a) as being obvious over Hajianpour.

By this Amendment, independent Claims 1 and 11 have been amended. Amended Claims 1 and 11 are directed to a needle protector for use with a needle assembly that includes a flexible plastic tube attached to a needle hub and a needle mounted on the hub. The housing is elongated and defined by a pair of facing side walls. The housing includes an open distal end and an open proximal end. The open proximal end has a multiple profile window adapted to selectively slidably receive and retain the tubing. At least one of the side walls includes a retaining member extending from the surface of the wall for retaining the hub of the needle assembly.

Applicants submit Claims 1 and 11 are not anticipated by Dillon et al. because Dillon et al. does not disclose or suggest a needle protector including a multiple profile window in the proximal open end adapted to selectively slidably receive and retain or secure the tubing. Amended Claims 1 and 11 disclose a multiple profile window comprised of two distinctly sized profiles or shapes. The first larger profile is sized and shaped to slidably receive the tubing while the second smaller profile is sized and shaped to retain or secure the tubing. Conversely, Dillon et al. specifically discloses in

Column 8 lines 50-52 a circular shaped opening (28). A circular shaped opening is by definition a single profile window.

The Examiner points to the window (28) in Figure 2 of Dillon et al. to state that the opening is circular "with tapered edges". As discussed above, this is contradicted by the very words of Dillon et al. which expressly describe the opening without qualification as a circular opening. A shape with tapered edges as shown in Figure 2 of Dillon et al. is by definition not a circle or a circular shape. The fact that the window (28) may be less than clearly drawn cannot contradict the unqualified words of the written specification.

Even if the single circular opening of Dillon et al. is tapered at the edges as suggested by the Office, any such tapered edges are clearly not "sized and shaped" to retain or secure the tubing. Pointedly, Dillon et al. clearly states this in Column 2 lines 56-58, disclosing "a rear opening adapted to loosely accommodate the tube." In fact, in addition to not disclosing a multi profile window, there is nothing in Dillon et al. to suggest that a portion of the circular opening (28) is sized or shaped to retain or secure the tubing, nor is there any appreciation or suggestion by Dillon et al. for the need to retain or secure the tubing. For these reasons, Dillon et al. does not anticipate Claims 1 and 11 of the present application.

Applicants also submit that Mathias et al. does not anticipate Claims 1 and 11 because Mathias et al. does not disclose or suggest that the opening in the proximal end is a multi profile window sized not to allow the hub to pass through. In Mathias et al., only the distal end can, in any way, be considered to have a multi profile window. However, this distal end is sized to allow the hub to pass through. The proximal end of the housing in Mathias et al. is sized to not allow the hub to pass through, The proximal

end is shown in Mathias et al. as a single rectangular opening (FIG. 3), which is therefore not a multi profile window. For these reasons, Mathias et al. does not anticipate Claims 1 and 11 of the present application.

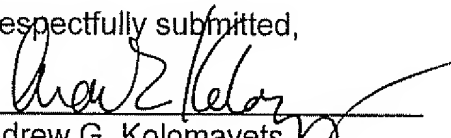
Because neither Dillon et al. nor Mathias et al. anticipates Claims 1 and 11 of the present application, Claims 1 and 11, as amended, should be allowed.

Applicants submit that since neither Dillon et al. nor Mathias et al. disclose the present invention as claimed in Claims 1 and 11, Claims 13 and 28 would not have been obvious over Dillon or Mathias in combination with Hajianpour. Moreover, Applicants submit that the use of Mathias et al. as prior art against the present application is improper. The owner and applicant of Mathias et al. is the same owner and applicant of the present application. Under 35 USC 103(c), the subject matter of the patent cannot be used to preclude patentability of the invention if both the subject matter of the patent and the invention are owned by the same entity. Therefore, Mathias et al. cannot be used as prior art against the present invention.

Claims 4-10 and 12-29 depend from either independent Claims 1 or 11. For the reasons set forth above, Applicants submit that dependent Claims 4-10 and 12-28 should likewise be allowed.

Applicants submit that all of the pending Claims 1, 4-28 are now in condition for allowance. Reconsideration and allowance of such claims are respectfully requested.

Respectfully submitted,

  
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